

Article - Tax - General

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§10–102.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Distributable cash flow” means taxable income reportable by a pass-through entity on its federal income tax return for the taxable year:

(i) adjusted, in the case of an entity using the accrual method of accounting to report federal taxable income, to reflect the amount of taxable income that would have been reported under the cash method of accounting;

(ii) increased by the sum of:

1. cash receipts for the taxable year that are not includable in the gross income of the entity, including capital contributions and loan proceeds;

2. amounts allowable to the entity for the taxable year as deductions for depreciation, amortization, and depletion; and

3. the decrease, if any, in the entity’s liability reserve as of the end of the taxable year; and

(iii) decreased by the sum of:

1. cash expenditures for the taxable year that are not deductible in computing the taxable income of the entity, not including distributions to shareholders, partners, or members; and

2. the increase, if any, in the entity’s liability reserve as of the end of the taxable year.

(3) “Liability reserve” means accrued unpaid liabilities that are not deductible in computing taxable income.

(4) “Member” means:

(i) a shareholder of an S corporation;

(ii) a general or limited partner of a partnership, limited partnership, or limited liability partnership;

(iii) a member of a limited liability company; or

(iv) a beneficiary of a business trust or statutory trust.

(5) “Nonresident entity” means an entity that is not formed under the laws of the State and is not qualified by or registered with the Department of Assessments and Taxation to do business in the State.

(6) “Nonresident taxable income” means any income described in § 10–210(b)(1) through (4) of this title.

(7) “Pass-through entity” means:

(i) an S corporation;

(ii) a partnership;

(iii) a limited liability company that is not taxed as a corporation under this title; or

(iv) a business trust or statutory trust that is not taxed as a corporation under this title.

(8) “Pass-through entity’s taxable income” means the portion of a pass-through entity’s income under the federal Internal Revenue Code that is derived from or reasonably attributable to the trade or business of the pass-through entity in this State.

(b) (1) Subject to paragraph (2) of this subsection, in addition to any other tax imposed under this title, a tax is imposed on each pass-through entity.

(2) Each pass-through entity:

(i) shall pay the tax imposed under paragraph (1) of this subsection with respect to the distributive shares or pro rata shares of the nonresident and nonresident entity members of the pass-through entity; or

(ii) may elect to pay the tax imposed under paragraph (1) of this subsection with respect to the distributive shares or pro rata shares of resident members of the pass-through entity.

(c) (1) With respect to a pass-through entity that pays the tax imposed under subsection (b)(1) of this section in accordance with subsection (b)(2)(i) of this section, the tax shall be treated as a tax imposed on the nonresident or nonresident entity members that is paid on behalf of the nonresidents or nonresident entities by the pass-through entity.

(2) The Comptroller shall provide by regulation for the treatment of the tax imposed under subsection (b) of this section that is paid on behalf of a nonresident entity member that is itself a pass-through entity.

(d) (1) With respect to a pass-through entity that pays the tax imposed under subsection (b)(1) of this section in accordance with subsection (b)(2)(i) of this section, the tax imposed is the sum of:

(i) a rate equal to the sum of the rate of the tax imposed under § 10-106.1 of this subtitle and the top marginal State tax rate for individuals under § 10-105(a) of this subtitle applied to the sum of each nonresident individual member's distributive share or pro rata share of the pass-through entity's nonresident taxable income; and

(ii) the rate of the tax for a corporation under § 10-105(b) of this subtitle applied to the sum of each nonresident entity member's distributive share or pro rata share of the pass-through entity's nonresident taxable income.

(2) With respect to a pass-through entity that pays the tax imposed under subsection (b)(1) of this section in accordance with subsection (b)(2)(ii) of this section, the tax imposed is the sum of:

(i) a rate equal to the sum of the rate of the tax imposed under § 10-106.1 of this subtitle and the top marginal State tax rate for individuals under § 10-105(a) of this subtitle applied to the sum of each individual member's distributive share or pro rata share of the pass-through entity's taxable income; and

(ii) the rate of the tax for a corporation under § 10-105(b) of this subtitle applied to the sum of each entity member's distributive share or pro rata share of the pass-through entity's taxable income.

(3) The tax required to be paid for any taxable year by a pass-through entity may not exceed:

(i) with respect to a pass-through entity that pays the tax imposed under subsection (b)(1) of this section in accordance with subsection (b)(2)(i) of this section, the sum of all of the nonresident and nonresident entity members' shares of the pass-through entity's distributable cash flow; and

(ii) with respect to a pass-through entity that pays the tax imposed under subsection (b)(1) of this section in accordance with subsection (b)(2)(ii) of this section, the sum of all of the members' shares of the pass-through entity's distributable cash flow.

(e) In accordance with § 10-701.1 of this title, each member may claim a credit against the tax imposed on the member for the member's proportionate share of the tax paid by the pass-through entity under subsection (b) of this section.

(f) (1) (i) The tax imposed under subsection (b) of this section does not apply with respect to the distributive share or pro rata share of a member that is itself a pass-through entity formed under the laws of the State or qualified by or registered with the Department of Assessments and Taxation to do business in the State.

(ii) A member of a pass-through entity that is itself a pass-through entity as described in subparagraph (i) of this paragraph shall itself comply with the provisions of this section.

(2) The tax imposed under subsection (b) of this section does not apply with respect to the direct or indirect distributive share or pro rata share of a member that is:

(i) a real estate investment trust as defined by § 856 of the Internal Revenue Code; or

(ii) an entity that is exempt from taxation under § 501 of the Internal Revenue Code.

(g) The Comptroller may provide by regulation for:

(1) the filing of composite returns by a pass-through entity on behalf of its nonresident and nonresident entity members; and

(2) application of or exemption from the tax imposed under subsection (b) of this section for a pass-through entity:

(i) that files a composite return on behalf of nonresident and nonresident entity members; or

(ii) the entity members of which are tax exempt.

(h) (1) Subject to paragraph (2) of this subsection, if a partnership fails to pay the tax when due, the tax may be collected from the partners under the law applicable to debts of the partnership, with the partnership and partners having rights of contribution against any partner on whose behalf the tax is paid.

(2) Unless it is established by the Comptroller that the partner participated in a pattern of distributions to one or more partners with the intention of defeating the partnership liability for the tax imposed under subsection (b) of this section, any partner otherwise liable under paragraph (1) of this subsection shall be liable for the tax imposed on the partnership only to the extent of distributions from the partnership to that partner after the tax was due to be paid by the partnership.

(i) Except as provided in § 10–701.1 of this title, nothing in this section limits or affects in any way the liability of an individual nonresident member or a nonresident entity member for the tax imposed on the individual nonresident or nonresident entity under § 10–102 of this subtitle.

(j) The tax imposed under subsection (b) of this section does not apply to a publicly traded pass-through entity that has agreed to file with the Comptroller an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Comptroller of each nonresident or nonresident entity member whose distributive share or pro rata share of the pass-through entity's nonresident taxable income for the taxable year exceeds \$500.

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